

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

THOMAS MICHAEL WEST,

Petitioner, : Case No. 3:18-cv-361

- vs -

District Judge Walter H. Rice
Magistrate Judge Michael R. Merz

LYNEAL WAINWRIGHT, Warden,
Marion Correctional Institution

Respondent.

**REPORT AND RECOMMENDATIONS ON DEMAND TO VACATE;
DIRECTION TO THE CLERK**

This habeas corpus case is before the Court on Petitioner's Demand to Vacate (ECF No. 21). The Clerk has appropriately docketed this as a motion which the Magistrate Judge construes as a motion seeking relief from judgment. Because Petitioner is proceeding *pro se*, the filing will be liberally construed. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *McNeil v. United States*, 508 U.S. 106, 113 (1993). As a post-judgment matter, it is deemed referred to the Magistrate Judge for a recommended disposition under 28 U.S.C. § 636(b)(3).

Petitioner seeks relief because he claims he was not served with notice of District Judge Rice's Decision and Entry of December 14, 2018 (ECF No. 16) and the resulting Clerk's Judgment (ECF No. 17). With respect to both of those documents, the docket contains the representation of the docketing deputy clerk that a copy was sent by regular mail to Mr. West. Accordingly, service, which is complete upon mailing, was made on Petitioner. Furthermore, the Court has not received

any returned mail from the Postal Service in this case which would have been docketed in the ordinary course. The Clerk is directed to send additional copies of these two documents to Mr. West.

The balance of Petitioner's Demand addresses his continued belief that he is entitled to habeas corpus relief under the Northwest Ordinance and the Articles of Confederation. These matters have been adequately addressed in the Magistrate Judge's Report and Recommendations of November 28, 2018 (ECF No. 14) which Judge Rice has adopted. West does not purport to show any error in that determination.

Accordingly, it is hereby recommended that the "Demand" be denied. Because reasonable jurists would not disagree with this conclusion, Petitioner should be denied a certificate of appealability and the Court should certify to the Sixth Circuit that any appeal would be objectively frivolous and therefore should not be permitted to proceed *in forma pauperis*.

February 26, 2019.

s/ **Michael R. Merz**
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by mail. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).